

Jamaica.

[Laws, etc.]



THE LAWS OF JAMAICA

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BY

LEACROFT ROBINSON, Q.C.,
Attorney General and
Commissioner.

SIR JOHN CARBERRY,
former Chief Justice,
Commissioner.

SIR COLIN MacGREGOR
former Chief Justice,
Commissioner.

MR. JUSTICE O. D. MARSH,
Chief Parliamentary Counsel,
Commissioner.

VERNON A. BARRETT, Q.C.,
former Chief Parliamentary
Counsel, Commissioner.

VICTOR B. GRANT, Q.C.,
former Attorney General,
Commissioner up to 7th
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DIVORCE

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THE DIVORCE ACT

[31st December, 1879.]

Preliminary

Cap. 102.
Law
50 of 1958.
Acts
30 of 1969,
42 of 1969,
2nd Sch.,
36 of 1976
Sch.
1 of 1979,
2nd Sch.

1. This Act may be cited as the Divorce Act.

Short title.

2.—(1) In this Act—

Interpreta-
tion.
30/1969
S. 2.

“adopted” means adopted in pursuance of an adoption order made under the Children (Adoption of) Act, or in pursuance of an adoption order made in a country other than Jamaica and recognized by the law of Jamaica as conferring upon the child in question, in relation to the child’s custody, maintenance and education, the status of a child of the adopter or adopters;

“relevant child” means a child who is—

- (a) a child of both parties to the marriage in question;
or
- (b) a child of one party to the marriage who has been accepted as one of the family by the other party, and in paragraphs (a) and (b) of this definition “child” includes adopted child.

36/1976
Sch.

(2) References to a child of the marriage in sections 16, 33, 36, 37 and subsection (2) of section 39 of this Act include references to a child adopted by both parties to the marriage.

[The inclusion of this page is authorized by L.N. 57/1980]

DIVORCE***General Jurisdiction and Powers of the Supreme Court in Divorce and Matrimonial Causes and Matters***

Supreme Court to have jurisdiction in divorce and matrimonial matters.

3. The Supreme Court shall be a Court for Divorce and Matrimonial Causes, and shall have and exercise as such in this Island, and subject to the provisions of this Act, jurisdiction and power to pronounce and enforce decrees of dissolution of marriage, judicial separation, nullity of marriage, restitution of conjugal rights, and such other jurisdiction in relation thereto or subsidiary thereto as is by this Act conferred, and including jurisdiction to make and enforce decrees and orders for the reversal of decrees of judicial separation, for damages against an adulterer and for the proper application of the same, for the making of pecuniary provision in certain cases for wives being parties to suits in the Court, and for settlements of property of parties to suits in the Court, and for the custody, protection, maintenance and education of any relevant child.

30/1969
S. 3.

With all necessary powers of the Court of Chancery.

4. The Supreme Court shall have, in addition to its own powers, all the powers of the Court of Chancery necessary to enable it to exercise such jurisdiction as is by this Act conferred on it, and for the purpose of enforcing its orders and decrees.

Name of Court for purposes of this Act.

5. The Supreme Court in relation to or in the exercise of such jurisdiction shall be called the Court for Divorce and Matrimonial Causes, hereinafter referred to as "the Court".

Principles to guide the Court in suits for judicial separation or nullity of marriage, etc.

6. In suits and proceedings for nullity of marriage, restitution of conjugal rights, and judicial separation the Court shall act and give relief in accordance with the principles and rules which, in the opinion of the Court, shall be as nearly as may be conformable to the principles and rules on which the Ecclesiastical Courts in England acted and gave relief before the passing of the United Kingdom Act 20 and 21 Victoria, Chapter 85, but subject to the provisions of this Act.

[The inclusion of this page is authorized by L.N. 57/1980]

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Suits for Nullity of Marriage

7.—(1) Decrees of nullity of marriage in respect of marriages celebrated in Jamaica may be pronounced by the Court on the ground that one of the parties to the marriage had a husband or wife living at the time of the marriage, or that the parties to the marriage were within the prohibited degrees of consanguinity or affinity, or that the parties to the marriage were not mutually consenting thereto by reason of duress or fraud, or incapacity of mind; or on the ground of the physical incapacity of one of the parties, or on the ground that the marriage was void under the provisions of the laws relating to marriage in force for the time being in this Island.

Grounds
for pro-
nouncing
decrees of
nullity of
marriage.

(2) In addition to any other grounds on which a marriage is by law void or voidable, a marriage shall be voidable on the ground—

- (a) that the marriage has not been consummated owing to the wilful refusal of the respondent to consummate the marriage; or 50/1958
S. 2.
- (b) that at the time of the marriage either party to the marriage— 30/1969
S. 4 (a).
 - (i) was of unsound mind; or
 - (ii) was suffering from mental disorder, as defined in subsection (3), of such a kind or to such an extent as to be unfitted for marriage and the procreation of children; or
 - (iii) was subject to recurrent attacks of insanity or epilepsy; or
- (c) that the respondent was at the time of the marriage suffering from venereal disease in a communicable form; or
- (d) that the respondent was at the time of the marriage pregnant by some person other than the petitioner:

[The inclusion of this page is authorized by L.N. 480/1973]

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Provided that, in the cases specified in paragraphs (b), (c), and (d), the Court shall not grant a decree unless it is satisfied—

- (i) that the petitioner was at the time of the marriage ignorant of the facts alleged;
- (ii) that proceedings were instituted within a year from the date of the marriage; and
- (iii) that marital intercourse with the consent of the petitioner has not taken place since the discovery by the petitioner of the existence of the grounds for a decree.

30/1969
S. 4 (b).

(3) In sub-paragraph (ii) of paragraph (b) of subsection (2) "mental disorder" means mental illness, arrested or incomplete development of mind, psychopathic disorder, and any other disorder or disability of mind.

(4) Nothing in subsections (2) and (3) shall be construed as validating any marriage which is by law void but with respect to which a decree of nullity has not been granted.

Legitimacy
of children
of voidable
marriages.

8. Where a decree of nullity is granted in respect of a voidable marriage, any child who would have been the legitimate child of the parties to the marriage if it had been dissolved, instead of being annulled, on the date of the decree, shall be deemed to be their legitimate child notwithstanding the annulment.

Suits for Judicial Separation

Grounds
for decree
of judicial
separation.

9. A petition for judicial separation may be presented to the Court either by the husband or by the wife on any grounds on which a petition for divorce might have been presented, or on the ground of failure to comply with a decree for restitution of conjugal rights or on any ground on which a decree for divorce *à mensâ et thoro* might have been pronounced in England immediately before the com-

[The inclusion of this page is authorized by L.N. 480/1973]

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mencement of the United Kingdom Act 20 and 21 Victoria, Chapter 85, and the provisions of section 19, other than subsection (5), and of section 25 of this Act shall (with the necessary modifications) apply in relation to a petition for judicial separation as they apply in relation to a petition for divorce.

30/1969
S. 5.

10. A person against whom the decree has been pronounced may at any time petition the Court to reverse it on the ground that it was obtained in his or her absence, and that there was reasonable ground for the alleged desertion where desertion was the ground for such decree.

Reversal
of decree.

The Court may, on being satisfied of the truth of the facts alleged, reverse the decree accordingly.

11. Where the decree is granted on the wife's petition, the Court may make any order it deems just for alimony, and may direct the same to be paid either to the wife herself, or to any trustee on her behalf to be approved by the Court, and may impose any terms or restrictions which it deems fit, and may from time to time appoint a new trustee if it deems fit, and may impose any terms it thinks fit as to the payment thereof.

Power to
order
alimony
for the
wife.

12. The decree of judicial separation shall have the effect of a divorce *à mensâ et thoro* under the law as it existed in England before the coming into operation of the United Kingdom Act 20 and 21 Victoria, Chapter 85.

Effect of
decree of
judicial
separation
between the
parties.

13.—(1) From the date of the decree, and whilst the separation continues, the wife shall be considered as in the position of a single woman with respect to property of every description which she may acquire or which may come to or devolve upon her.

As to pro-
perty of the
wife and her
civil status
during sepa-
ration, and
after the
separation
ceases.

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(2) If the wife again cohabits with her husband the property to which she is entitled when such cohabitation takes place shall be held to her separate use, subject to any agreement in writing made between herself and her husband whilst separate.

(3) The provisions of subsections (1) and (2) shall extend to property to which during separation the wife becomes entitled in a fiduciary capacity, or for an estate in remainder or in reversion.

(4) From the date of the decree, and whilst the separation continues, the wife shall be considered as in the position of a single woman for the purposes of civil rights, liabilities and proceedings, except in relation to the contract of marriage:

Provided, that where alimony has been decreed and is not duly paid by the husband he shall be liable for necessities supplied for the wife's use:

And provided that nothing shall prevent the wife from joining at any time during the separation in the exercise of any joint power given to herself and her husband.

(5) The termination of the separation shall not affect the rights or remedies as against the wife of parties who dealt with the wife during the separation.

(6) The rights and remedies of parties dealing with a wife as a single woman after the termination of a separation and without notice thereof shall be the same as if the separation continued at the time of such dealings.

Application, etc., for Restitution of Conjugal Rights

Restitution
of conjugal
rights.

14. Application for restitution of conjugal rights may be made by either husband or wife by petition to the Court and the Court on being satisfied of the truth of the allegations therein contained and that there is no legal ground

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why the same should not be granted may decree such restitution of conjugal rights and where the application is by the wife may make any order for alimony which shall be deemed just.

15. A decree for restitution of conjugal rights shall not be enforced by attachment, but where the application is by the wife the Court may, at the time of making such decree, or at any time afterwards, order that in the event of such decree not being complied with within any time in that behalf limited by the Court the respondent shall make to the petitioner such periodical payments as may be just, and such order may be enforced in the same manner as an order for alimony in a suit for judicial separation. The Court may, if it shall think fit, order that the husband shall, to the satisfaction of the Court secure to the wife such periodical payment, and for that purpose direct settle and approve of a proper deed or instrument to be executed by all necessary parties.

Decree of
restitution.

16. Where the application for restitution of conjugal rights is by the husband, if it shall be made to appear to the Court that the wife is entitled to any property, either in possession or reversion, or is in receipt of any profits of trade or earnings, the Court may, if it shall think fit, order a settlement to be made to the satisfaction of the Court of such property, or any part thereof for the benefit of the petitioner and of the children of the marriage, or either or any of them, or may order such part as the Court may think reasonable of such profits of trade or earnings to be periodically paid by the respondent to the petitioner for his own benefit, or to the petitioner or any other person for the benefit of the children of the marriage, or either or any of them.

Provisions
where
application
for
restitution
is made by
husband.

[The inclusion of this page is authorized by L.N. 480/1973]

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Court may vary or modify any order for periodical payment.

17. The Court may from time to time vary or modify any order for the periodical payment of money, either by altering the times of payment or by increasing or diminishing the amount, or may temporarily suspend the same as to the whole or any part of the money so ordered to be paid, and again revive the same order wholly or in part, as the Court may think just.

Provisions when respondent fails to comply with decree for restitution.

18. If the respondent shall fail to comply with a decree of the Court for restitution of conjugal rights such respondent shall thereupon be deemed to have been guilty of desertion without reasonable cause, and a suit for judicial separation may be forthwith instituted and a sentence of judicial separation may be pronounced although the period of three years may not have elapsed since the failure to comply with the decree for restitution of conjugal rights.

Suits for Dissolution of Marriage

Grounds of petition for divorce.

19.—(1) A petition for divorce may be presented to the Court either by the husband or the wife on the ground that the respondent—

- (a) has since the celebration of the marriage committed adultery; or
- (b) has deserted the petitioner without cause for a period of at least three years immediately preceding the presentation of the petition; or
- (c) has since the celebration of the marriage treated the petitioner with cruelty; or
- (d) is incurably of unsound mind and has been continuously under care and treatment for a period of at least five years immediately preceding the presentation of the petition,

and by the wife on the ground that her husband has, since the celebration of the marriage, been guilty of rape, sodomy, or bestiality.

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(2) A petition for divorce may also be presented to the Court either by the husband or the wife on the ground that the petitioner and the respondent are living separately and apart and have been living separately and apart for a continuous period of at least five years immediately preceding the presentation of the petition. 30/1969
S.7(a).

(3) In calculating for the purposes of paragraph (b) of subsection (1) the period for which the respondent has deserted the petitioner without cause, and in considering whether the desertion has been continuous, no account shall be taken of any one period (not exceeding three months) during which the parties resumed cohabitation with a view to reconciliation, and for the purposes of a petition for divorce, the Court may treat a period of desertion as having continued at a time when the deserting party was incapable of continuing the necessary intention if the evidence before the Court is such that, had that party not been so incapable, the Court would have inferred that the intention continued at that time.

(4) In calculating for the purposes of subsection (2) any period for which the petitioner and respondent have been living separately and apart, and in considering whether such period has been continuous, no account shall be taken of any one period (not exceeding three months) during which the parties resumed cohabitation with a view to reconciliation.

(5) (a) No petition for divorce shall be presented to the Court unless at the date of the presentation of the petition three years have passed since the date of the marriage:

Provided that a Judge of the Court may, upon application being made to him in accordance with rules of court, allow a petition to be presented before three years have passed on the ground that the case is one of exceptional hardship suffered by the petitioner or of exceptional

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depravity on the part of the respondent, but if it appears to the Court at the hearing of the petition, that the petitioner obtained leave to present the petition by any misrepresentation or concealment of the nature of the case, the Court may, if it pronounces a decree *nisi*, do so subject to the condition that no application to make the decree absolute shall be made until after the expiration of three years from the date of the marriage, or may dismiss the petition, without prejudice to any petition which may be brought after the expiration of the said three years upon the same, or substantially the same facts as those proved in support of the petition so dismissed.

30/1969
S. 7(b).

(b) In determining any application under this subsection for leave to present a petition before the expiration of three years from the date of the marriage, the Judge shall have regard to the interests of any relevant child and to the question whether there is reasonable probability of a reconciliation between the parties before the expiration of the said three years.

(c) Nothing in this subsection shall be deemed to prohibit the presentation of a petition based upon matters which have occurred before the expiration of three years from the date of the marriage.

Definition
of care and
treatment
in relation
to insanity.

(6) For the purposes of subsection (1), a person of unsound mind shall be deemed to be under care and treatment—

42/1969
2nd Sch.

(a) while he is detained in pursuance of any order or inquisition under the laws for the time being in force relating to the Bellevue Hospital, or is being detained as a criminal lunatic under the Criminal Justice (Administration) Act, or in pursuance of a warrant under section 24 of the Prisons Act, or in pursuance of certificates under section 29 of the Mental Hospital Act;

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- (b) while he is receiving treatment as a voluntary boarder under the Mental Hospital Act, being treatment which follows without any interval a period of such detention as aforesaid;
- (c) while he is receiving treatment for mental illness as a resident in a hospital or other institution (whether within or outside Jamaica) that is approved, for the purposes of this paragraph, by the Minister for the time being responsible for health, and not otherwise, and in determining for the purposes of subsection (1) whether any period of care and treatment has been continuous, any interruption of the period for twenty-eight days or less shall be disregarded.

30/1969
S. 7 (d).30/1969
S. 7 (e).

20.—(1) Any married person who alleges that reasonable grounds exist for supposing that the other party to the marriage is dead may present a petition to the Court to have it presumed that the other party is dead and to have the marriage dissolved, and the Court, if satisfied that such reasonable grounds exist, may make a decree of presumption of death and of dissolution of the marriage.

Proceedings
for decree
of presump-
tion of
death and
dissolution
of
marriage.

(2) In any such proceedings the fact that for a period of seven years or upwards the other party to the marriage has been continually absent from the petitioner, and the petitioner has no reason to believe that the other party has been living within that time, shall be evidence that he or she is dead until the contrary is proved.

(3) Sections 27, 28 and 32 shall apply to a petition and a decree under this section as they apply to a petition for divorce and a decree of divorce respectively.

30/1969
S. 8.

21.—(1) A person shall not be prevented from presenting a petition for divorce, or the Court from pronouncing a decree of divorce, by reason only that the petitioner has at

Divorce
proceedings
after grant
of judicial
separation.

[The inclusion of this page is authorized by L.N. 480/1973]

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any time been granted a judicial separation upon the same or substantially the same facts as those proved in support of the petition for divorce.

(2) On any such petition for divorce, the Court may treat the decree of judicial separation as sufficient proof of the adultery, desertion, or other ground on which it was granted, but the Court shall not pronounce a decree of divorce without receiving evidence from the petitioner.

(3) For the purposes of any such petition for divorce, a period of desertion immediately preceding the institution of proceedings for a decree of judicial separation shall, if the parties have not resumed cohabitation and the decree has been continuously in force since the granting thereof, be deemed immediately to precede the presentation of the petition for divorce.

Jurisdiction
in case of
husband's
change of
domicile.

42/1969
2nd Sch.

22. Where a wife has been deserted by her husband, or where her husband has been deported from this Island under any law for the time being in force relating to the deportation of aliens, and the husband was immediately before the desertion or deportation domiciled in this Island, the Court shall have jurisdiction for the purpose of any proceedings, notwithstanding that the husband has changed his domicile since the desertion or deportation.

Extension
of juris-
diction of
Supreme
Court in
certain
matri-
monial
proceed-
ings.
42/1969
2nd Sch.

23.—(1) The Supreme Court shall have jurisdiction in proceedings by a wife for divorce, notwithstanding that the husband is not domiciled in this Island, if the wife is resident in this Island and has been ordinarily resident there for a period of three years immediately preceding the commencement of the proceedings.

(2) Without prejudice to any jurisdiction exercisable by the Court apart from this section, the foregoing provisions of this section shall apply to proceedings for nullity of marriage as they apply to proceedings for divorce.

[The inclusion of this page is authorized by L.N. 480/1973]

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(3) In proceedings under subsection (1) of section 20, the Court shall have jurisdiction in the following cases only, that is to say—

(a) in any proceedings, if the petitioner is domiciled in this Island; 42/1969
2nd Sch.

(b) in proceedings by the wife, if she is resident in this Island and has been ordinarily resident there for a period of three years immediately preceding the commencement of the proceedings,

and in determining for the purposes of this subsection whether a woman is domiciled in this Island, her husband shall be treated as having died immediately after the last occasion on which she knew or had reason to believe him to be living.

(4) In any proceedings in which the Court has jurisdiction by virtue of this section, of section 22, or of section 2 of the Divorce (War Marriages) Law, 1945, the issues shall be determined in accordance with the law which would be applicable thereto if both parties were domiciled in this Island at the time of the proceedings. Law 12
of 1946.
(Omitted).

24. Where a husband is the petitioner he shall make the alleged adulterer a co-respondent to the petition, unless he is excused from doing so on special grounds to be allowed by the Court. As to
co-respon-
dents.

Where a wife is the petitioner the Court may, if it sees fit, direct the person with whom the husband is alleged to have committed adultery to be made a co-respondent to the petition.

The Court may dismiss any co-respondent from the suit if after the evidence for the petitioner it thinks there is not sufficient evidence against him or her.

[The inclusion of this page is authorized by L.N. 480/1973]

Duty of
Court on
presenta-
tion of
petition for
divorce.

25.—(1) On a petition for divorce it shall be the duty of the Court to enquire, so far as it reasonably can, into the facts alleged and whether there has been any connivance or condonation on the part of the petitioner and whether any collusion exists between the parties and also to enquire into any countercharge which is made against the petitioner.

30/1969
S. 9 (a).

(2) Provision may be made by rules of court for enabling the Court, on application made either before or after the presentation of the petition, to take into consideration for the purposes of this section any agreement or arrangement made or proposed to be made between the parties and to give such directions in the matter as the Court thinks fit, but nothing in this subsection affects any duty of the parties to disclose to the Court any agreement or arrangement made between the parties in contemplation of or in connection with the proceedings.

(3) If the Court is satisfied on the evidence that—

- (i) the case for the petition has been proved; and
- (ii) where the ground of the petition is adultery, the petitioner has not in any manner been accessory to, or connived at, or condoned the adultery, or where the ground of the petition is cruelty the petitioner has not in any manner condoned the cruelty; and
- (iii) where the ground of the petition is that mentioned in subsection (2) of section 19 and the respondent opposes the pronouncement of a decree, that the petitioner has proved that the separation was wholly or substantially due to the wrongful act or conduct of the respondent,

30/1969
S. 9 (b).

the Court shall pronounce a decree of divorce, but if the Court is not satisfied with respect to any of the aforesaid matters, it shall dismiss the petition:

[The inclusion of this page is authorized by L.N. 480/1973]

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Decree
absolute.
30/1969
S. 11.
50/1958
S. 4.

27.—(1) A decree of divorce or nullity of marriage shall not be made absolute till after the expiration of six months from the date of the decree *nisi*, unless the Court by general or special order from time to time fixes a shorter time,* and during that period any person may show cause why the decree should not be made absolute by reason of the same having been obtained by collusion, or by reason of material facts not brought before the Court.

On cause being shown, the Court shall deal with the case by making the decree absolute, or by reversing the decree *nisi*, or by requiring further inquiry or otherwise as justice may require.

(2) Where a decree *nisi* has been obtained whether before or after the passing of this Act, and no application for the decree to be made absolute has been made by the party who obtained the decree, then, at any time after the expiration of three months from the earliest date on which that party could have made such an application, the party against whom the decree *nisi* has been granted shall be at liberty to apply to the Court and the Court shall, on such application, have power to make the decree absolute, reverse the decree *nisi*, require further enquiry or otherwise deal with the case as the Court thinks fit.

Interven-
tion by
direction
of a Judge
when
collusion
suspected.
30/1969
S. 12 (a).

28. In the case of proceedings for divorce or nullity of marriage at any time during the progress of the cause, or before the decree is made absolute, any person may give information to the Clerk of the Court of any matter material to the due decision of the case, who shall thereupon lay the same before a Judge of the Court, and if from any such information or otherwise there appears to the Judge to be reason to suspect that any parties to the suit are or have been acting in collusion for the purpose of obtaining a decree contrary to the justice of the case, he may direct the papers and information before him to

30/1969
S. 12 (b).

*Vide L.N. 249/1958.

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Provided that the Court shall not be bound to pronounce a decree of divorce and may dismiss the petition if it finds that the petition is presented or prosecuted in collusion with the respondent or either of the respondents or that the petitioner has during the marriage been guilty of adultery or if, in the opinion of the Court, the petitioner has been guilty—

30/1969
S. 9 (c).

- (a) of unreasonable delay in presenting or prosecuting the petition; or
- (b) of cruelty towards the other party to the marriage; or
- (c) where the ground of the petition is adultery or cruelty, of having without reasonable excuse deserted, or having without reasonable excuse wilfully separated himself or herself from, the other party before the adultery or cruelty complained of; or
- (d) where the ground of the petition is adultery or unsoundness of mind or desertion, of such wilful neglect or misconduct as has conduced to the adultery or unsoundness of mind or desertion.

26.—(1) Any presumption of condonation which arises from the continuance or resumption of marital intercourse may be rebutted by evidence sufficient to negative the necessary intent.

Condonation.
30/1969
S. 10.

(2) For the purposes of this Act, adultery or cruelty shall not be deemed to have been condoned by reason only of a continuation or resumption of cohabitation between the parties for one period not exceeding three months, or of anything done during such cohabitation, if it is proved that cohabitation was continued or resumed, as the case may be, with a view to effecting a reconciliation.

(3) Adultery which has been condoned shall not be capable of being revived.

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DIVORCE

Decree
absolute.
30/1969
S. 11.
50/1958
S. 4.

27.—(1) A decree of divorce or nullity of marriage shall not be made absolute till after the expiration of six months from the date of the decree *nisi*, unless the Court by general or special order from time to time fixes a shorter time,* and during that period any person may show cause why the decree should not be made absolute by reason of the same having been obtained by collusion, or by reason of material facts not brought before the Court.

On cause being shown, the Court shall deal with the case by making the decree absolute, or by reversing the decree *nisi*, or by requiring further inquiry or otherwise as justice may require.

(2) Where a decree *nisi* has been obtained whether before or after the passing of this Act, and no application for the decree to be made absolute has been made by the party who obtained the decree, then, at any time after the expiration of three months from the earliest date on which that party could have made such an application, the party against whom the decree *nisi* has been granted shall be at liberty to apply to the Court and the Court shall, on such application, have power to make the decree absolute, reverse the decree *nisi*, require further enquiry or otherwise deal with the case as the Court thinks fit.

Interven-
tion by
direction
of a Judge
when
collusion
suspected.
30/1969
S. 12 (a).

28. In the case of proceedings for divorce or nullity of marriage at any time during the progress of the cause, or before the decree is made absolute, any person may give information to the Clerk of the Court of any matter material to the due decision of the case, who shall thereupon lay the same before a Judge of the Court, and if from any such information or otherwise there appears to the Judge to be reason to suspect that any parties to the suit are or have been acting in collusion for the purpose of obtaining a decree contrary to the justice of the case, he may direct the papers and information before him to

30/1969
S. 12 (b).

*Vide L.N. 249/1958.

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be sent by the Clerk to a solicitor to be named by such Judge, with directions to intervene in the suit alleging such case of collusion, and to retain counsel and subpoena witnesses to prove it; and it shall be lawful for the Court to order the costs of such counsel and witnesses, and otherwise arising from such intervention, to be paid by the parties or such of them as it sees fit, including a wife if she has separate property, and in case the solicitor engaged is not thereby fully satisfied his reasonable taxed costs, he shall be entitled to charge and be reimbursed the difference, and be paid the same by such person and in such manner as may be prescribed by rules of court.

L.N.
223/1964.

29.—(1) On any decree for the dissolution or nullity of marriage the Court may, if it thinks fit, order the husband to the satisfaction of the Court to secure to the wife such gross sum of money or such annual sum of money for any term not exceeding her own life, as having regard to her fortune (if any), to the ability of the husband, and to the conduct of the parties, it deems reasonable, and for that purpose may refer it to any barrister or solicitor to settle and approve of a proper instrument to be executed by all necessary parties, and may order the costs of such instrument to be paid by the parties, or such of them as it sees fit, and the Court may in such case, if it sees fit, suspend the pronouncing of its decree until the deed has been duly executed; and upon any petition for dissolution of marriage the Court shall have the same power to make interim orders for payment of money, by way of alimony or otherwise to the wife, as it would have in a suit instituted for judicial separation.

Powers of
the Court
to make
provision
for the
wife.

(2) In any such case as aforesaid the Court may, if it thinks fit, by order, either in addition to or instead of an order under subsection (1), direct the husband to pay to the wife during the joint lives of the husband and wife such monthly or weekly sum for her maintenance and support as the Court may think reasonable:

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Provided that—

- (a) if the husband, after any such order has been made becomes from any cause unable to make the payments, the Court may discharge or modify the order, or temporarily suspend the order as to the whole or any part of the money ordered to be paid, and subsequently revive it wholly or in part as the Court thinks fit; and
- (b) where the Court has made any such order as is mentioned in this subsection and the Court is satisfied that the means of the husband have increased, the Court may if it thinks fit, increase the amount payable under the order.

Power to
afford
relief to
respondent
as to
offences by
petitioner.
30/1969
S. 13 (a).

30.—(1) In any suit for dissolution of marriage, if the respondent opposes the relief sought on the ground of the husband's adultery, cruelty or desertion, or on the ground of the wife's adultery or cruelty, the Court may give the respondent on his or her application the same relief that he or she might have had if he or she had filed a petition seeking for it.

30/1969
S. 13 (b).

(2) The provisions of subsection (1) apply in relation to the respondent in any suit for dissolution of marriage in respect of which the Court has jurisdiction by virtue of the provisions of subsection (1) of section 23, so, however, that if the petitioner for any reason fails to prosecute the petition, the Court shall not proceed with the respondent's application for relief or grant the same unless the Court considers that the justice of the case requires that such be done.

As to
co-respon-
dent's
liability to
costs.

31. Where in a petition presented by a husband the alleged adulterer has been made a co-respondent, and the adultery has been established, the Court may order the adulterer to pay the whole or any part of the costs of the proceedings.

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30/1969
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(5) The damages to be recovered on any such petition shall in all cases be ascertained by the verdict of a jury, although the respondents or either of them may not appear.

(6) After a verdict has been given, the Court shall have power to direct in what manner such damages shall be paid or applied, and to direct that the whole or any part thereof shall be settled for the benefit of the children (if any) of the marriage, or as a provision for the maintenance of the wife.

Action of
criminal
conversa-
tion
abolished.

34. No action shall be maintainable in Jamaica for criminal conversation.

Dispositions and Orders Pending and After Suits

Custody,
mainten-
ance and
education
of children.
30/1969
S. 15.

35.—(1) The Court may make such order as it thinks just for the custody, maintenance and education of any relevant child—

- (a) in any proceedings for dissolution or nullity of marriage or for judicial separation, before, by or after the final decree;
- (b) where such proceedings are dismissed after the beginning of the trial, either forthwith or within a reasonable period after the dismissal;
- (c) in any proceedings for restitution of conjugal rights, before the decree or, if the respondent fails to comply with the decree, after the decree,

and in any case in which the Court has power by virtue of paragraph (a) to make an order in respect of a child it may instead, if it thinks fit, direct that proper proceedings be taken for placing the child under the protection of the Court.

(2) The Court may, if it thinks fit, on granting any decree of dissolution or nullity of marriage or at any time thereafter (whether before or after the decree is made

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absolute), order the husband, or (in the case of a petition for divorce by a wife on the ground of her husband's insanity) order the wife, to secure for the benefit of the relevant children such gross sum of money or annual sum of money as the Court may deem reasonable, and the Court may for that purpose direct that it shall be referred to any barrister or solicitor to settle and approve a proper deed or instrument to be executed by all necessary parties and may direct that the costs of such instrument be paid by the parties or such of them as it sees fit:

Provided that the term for which any sum of money is secured for the benefit of a child shall not extend beyond the date when the child will attain twenty-one years of age.

(3) In considering whether any and what order should be made under this section for requiring any party to make any payment, by virtue of paragraph (b) of the definition of "relevant child" contained in section 2, towards the maintenance or education of a child who is not his own, the Court shall have regard—

- (a) to the extent (if any) to which that party had, on or after the acceptance of the child as one of the family, assumed responsibility for the child's maintenance; and
- (b) to the liability of any person other than a party to the marriage to maintain the child.

36. Where the Court pronounces a decree of divorce or for judicial separation for adultery, desertion or cruelty of the wife, and it is made to appear to the Court that the wife is entitled to any property either in possession or reversion, the Court may if it thinks proper order such settlement as it thinks reasonable to be made of such property, or any part thereof, for the benefit of the innocent party and of the children of the marriage, or any of them.

Power to provide for children and husband out of separate property of guilty wife.

[The inclusion of this page is authorized by L.N. 480/1973]

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The disability of coverture shall not affect the validity of any instrument executed pursuant to such order.

Power to make provision for children or parents out of settled property.

37. The Court after a final decree of nullity of marriage or dissolution of marriage may inquire into the existence of antenuptial or postnuptial settlements made on the parties whose marriage is the subject of the decree, and may make such orders with reference to the application of the whole or a portion of the property settled either for the benefit of the children of the marriage or of their respective parents, as to the Court shall seem fit.

Amendments as to maintenance, settlement of property, etc.
30/1969
S. 16 (a).

38.—(1) When a petition for divorce or nullity of marriage has been presented, proceedings under section 29, subsection (2) of section 35 and sections 36 and 37 may, subject to and in accordance with rules of court, be commenced at any time after the presentation of the petition:

Provided that no order under any of the said sections or under the said subsection (other than an interim order for the payment of alimony under section 29) shall be made unless and until a decree *nisi* has been pronounced, and no such order, save in so far as it relates to the preparation, execution, or approval of a deed or instrument and no settlement made in pursuance of any such order, shall take effect unless and until the decree is made absolute.

(2) The said section 29 shall apply in any case where a petition for divorce or judicial separation is presented by the wife on the ground of her husband's insanity as if for the references to the husband there were substituted references to the wife, and for the references to the wife, there were substituted references to the husband, and in any such case and in any case where a petition for divorce, nullity or judicial separation, is presented by the husband on the ground of his wife's insanity or mental deficiency or disorder, the Court may order the payments of

30/1969
S. 16 (b).

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alimony or maintenance under the said section to be made to such person having charge of the respondent as the Court may direct.

*Ancillary Provisions***39.—(1) Where—**

- (a) a husband has been guilty of wilful neglect to provide reasonable maintenance for his wife or any child to whom this subsection applies; and
- (b) the Court would have jurisdiction to entertain proceedings by the wife for judicial separation, then, without prejudice to the provisions of subsection (2) of section 42, the Court may, on the application of the wife, order the husband to make to her such periodical payments as may be just.

Neglect to
maintain.
30/1969
S. 17.

(2) Subsection (1) shall apply to any child of the marriage in question, and any other child of both parties to the marriage, who has not attained the age of twenty-one years.

1/1979
2nd Sch.

(3) Where the Court makes an order under subsection (1)—

- (a) the order may be enforced in the same manner as an order for alimony in proceedings for judicial separation; and
- (b) the Court may, if it thinks fit, order that the husband shall, to the satisfaction of the Court, secure the periodical payments to the wife and may for that purpose give such a direction as is mentioned in subsection (2) of section 35.

40.—(1) Where proceedings for relief under any of the relevant provisions of this Act (hereafter in this section referred to as "financial relief") are brought by a person against his or her spouse or former spouse (hereafter in this section referred to as "the other party"), the Court may, on an application by that person—

Avoidance
of transac-
tions in-
tended to
prevent
relief.
30/1969
S. 17.

[The inclusion of this page is authorized by L.N. 57/1980]

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- (a) if it is satisfied that the other party is, with the intention of defeating the claim for financial relief, about to make any disposition or to transfer out of the jurisdiction, or otherwise deal with, any property, make such order as it thinks fit for restraining the other party from so doing or otherwise for protecting the claim;
 - (b) if it is satisfied that the other party has, with the intention aforesaid, made a disposition to which this paragraph applies and that if the disposition were set aside financial relief or different financial relief would be granted to the applicant, make an order setting aside the disposition and give such consequential directions as it thinks fit for giving effect to the order (including directions requiring the making of any payment or the disposal of any property);
 - (c) if it is satisfied, in a case where an order under the relevant provisions of this Act has been obtained by the applicant against the other party, that the other party has, with the intention aforesaid, made a disposition to which this paragraph applies, make such an order and give such directions as are mentioned in paragraph (b),
- and an application for the purposes of paragraph (b) shall be made in the proceedings for the financial relief in question.

(2) Paragraphs (b) and (c) of subsection (1) apply, respectively, to a disposition made by the other party (whether before or after the commencement of the proceedings for financial relief) within the period of three years ending with the date of the application made for the purposes of the paragraph in question, not being a disposition made for valuable consideration (other than marriage)

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to a person who, at the time of the disposition, acted in relation to it in good faith and without notice of any such intention as aforesaid on the part of the other party.

(3) Where an application is made under this section with respect to a disposition or other transaction and the Court is satisfied—

(a) in a case falling within paragraph (a) or (b) of subsection (1), that the disposition or other transaction would (apart from this section) have the consequence; or

(b) in a case falling within paragraph (c) of subsection (1), that the disposition has had the consequence, of defeating the applicant's claim for financial relief, the disposition shall be presumed, unless the contrary is shown, to have been made by the other party with the intention aforesaid.

(4) In this section—

“disposition” does not include any provision contained in a will or codicil but, with that exception, includes any conveyance, assurance or gift of property of any description, whether made by an instrument or otherwise;

“property” means any real or personal property, any estate or interest in real or personal property, any money, any negotiable instrument, debt or other chose in action, or any other right or interest whether in possession or not;

“the relevant provisions of this Act” means any of the provisions of sections 11, 15, 16, 29, 35, 36, subsection (2) of section 38 and section 39, and the provisions of section 14 relating to alimony,
and any reference to defeating an applicant's claim for financial relief is a reference to preventing financial relief from being granted to the applicant or reducing the amount

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of any financial relief which might be so granted, or frustrating or impeding the enforcement of any order which might be made at the instance of the applicant under the relevant provisions of this Act.

Restrictions
on decrees
for dissolution,
nullity
or separation
affecting
children.
30/1969
S. 17.

41.—(1) Notwithstanding anything in this Act but subject to subsection (2), the Court shall not make absolute a decree for the dissolution or nullity of marriage in any proceedings begun after the 1st December, 1969, or make a decree of judicial separation in any such proceedings, unless it is satisfied as respects every relevant child who is under sixteen that—

- (a) arrangements for his care and upbringing have been made and are satisfactory or are the best that can be devised in the circumstances; or
- (b) it is impracticable for the party or parties appearing before the Court to make any such arrangements.

(2) The Court may if it thinks fit proceed without observing the requirements of subsection (1) if—

- (a) it appears that there are circumstances making it desirable that the decree should be made absolute or should be made, as the case may be, without delay; and
- (b) The Court has obtained a satisfactory undertaking from either or both of the parties to bring the question of the arrangements for the children before the Court within a specified time.

Custody,
etc., of
children
in case of
neglect.
30/1969
S. 17.

42.—(1) Where the Court makes an order under subsection (1) of section 39, the Court shall also have jurisdiction from time to time to make such order as appears just with respect to the custody of any child to whom that subsection applies, but the jurisdiction conferred by this

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subsection and any order made in exercise of that jurisdiction shall have effect only as respects any period when an order is in force under that subsection:

Provided that an order pursuant to this section shall not be made in respect of a child who has attained the age of eighteen years or on terms which extend beyond the date on which any child to whom the order relates attains the age of eighteen years. ^{1/1979} 2nd Sch.

(2) In any case where the Court would have power, on an application made under subsection (1) of the said section 39, to order the husband to make to the wife periodical payments for the maintenance of a child to whom that subsection applies, the Court may, if it thinks fit, order those payments to be made to the child, or to any other person for the benefit of the child, instead of to the wife, and the reference to wife in subsection (3) of that section shall be construed accordingly.

(3) Section 40 shall apply to relief under this section as if for references in that section to the relevant provisions of this Act there were substituted references to this section.

(4) Without prejudice to any power to include, in any order under this Act for the custody, maintenance and education of a child, provision for access to him, the reference to custody of a child in subsection (1) includes a reference to access to the child.

43.—(1) Where the Court has jurisdiction by virtue of section 35 or 42 to make an order for the custody of a child and it appears to the Court that there are exceptional circumstances making it desirable that the child should be under the supervision of an independent person, the Court may, as respects any period during which the child is, in exercise of that jurisdiction, committed to the custody of any person, order that the child be under the supervision of a welfare officer. ^{Power to provide for supervision of children 30/1969 S. 17.}

(2) Where the Court makes an order under this section for supervision by a welfare officer, the person

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responsible for carrying out the order shall be such public officer as may be selected under arrangements made by the Minister.

(3) Where a child is under the supervision of a welfare officer in pursuance of this section, the jurisdiction possessed by the Court to vary any order made with respect to the child's custody, maintenance or education under section 35 or 42 shall, subject to any rules of court, be exercisable at the instance of the Court itself.

(4) The Court shall have power from time to time by an order under this section to vary or discharge any provision made in pursuance of this section.

Practice and Procedure of Court

Notice of
petition.

44. All parties to be affected by a petition shall be served with notice thereof in such manner as the Court may direct by rules, except in cases where the Court deems it expedient to dispense with notice.

Examina-
tion of
petitioner.

45. The Court may if it thinks fit order the attendance of the petitioner, and may examine him or her, or permit him or her to be examined or cross-examined on oath on the hearing of any petition.

Such petitioner shall not be bound to answer any question tending to show that he or she has been guilty of adultery.

The Court may from time to time adjourn the hearing of a petition, and may require further evidence thereon if it thinks fit.

Examina-
tion of
witnesses.

46. The witnesses in proceedings before the Court where their attendance can be had shall be examined *viva voce* and in open Court:

Provided that parties, except as hereinbefore provided, shall be at liberty to verify their respective cases in whole or in part by affidavit, but so that the deponent in such case shall, on the application of the opposite party or by direction of the Court, be subject to be cross-examined by

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or on behalf of the opposite party *viva voce* in open Court, and after such cross-examination may be re-examined orally in open Court as aforesaid by or on behalf of the party by whom such affidavit was filed.

Where the Court dispenses with the attendance of a witness for illness or other sufficient cause, it may order him or her to be examined by interrogatories, or otherwise by a commissioner or examiner to be appointed by the Court.

47. The Court on the hearing of any proceeding under this Act may make such order as to costs as may seem fit.

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